TRUSTS—RELEASE—MISTAKE OF LAW—RIGHT TO RELIEF.—A beneficiary under a testamentary trust gave a release of claims against the estate in consideration of a void note given by the trustees for future payment. The parties believed the transaction to be valid and no loss to the estate was entailed thereby. Complainant filed a bill to rescind the release and to obtain the money or the part of the trust fund to which he was entitled. *Held,* complainant's right to rescind was not precluded because the mistake was one of law. *Reggio* v. *Warren* (1911), — Mass. —, 93 N. E. 805.

The general rule is that equity will not relieve against a mistake of law. *Hunt* v. *Rousmanier,* 8 Wheat. 174; *Euler* v. *Schroeder,* 112 Md. 155, 76 Atl. 164. But relief is frequently granted in such cases. *Griswold* v. *Hazard,* 141 U. S. 260; *Burton* v. *Haden,* 108 Va. 51, 15 L. R. A. (N. S.) 1038, 66 S. E. 736. There does not seem to be any well recognized classification of the exceptions to the general rule. In *Cooper* v. *Phibbs,* L. R. 2 H. L. 149. 16 L. T. Rep. (N. S.) 678, 15 Wkly Rep. 1049 the court made a distinction between general law and private rights, holding that a mistake as to general law was not relievable but a mistake as to private right might be. The soundness of this distinction has been questioned. BISPHAM'S EQUITY, Ed. 5, p. 274. It is held in some of the cases that relief will be granted against a mistake of law but not against ignorance of the law. *Lawrence* v. *Beaubien,* 2 Bailey 623, 23 Am. Dec. 155. In other cases this distinction is rejected. *Champlin* v. *Laytin,* 18 Wend. 407. If there is any element of fact the court will seize upon it as sufficient in connection with a mistake of law to justify the granting of relief. *Hollingsworth* v. *Stone,* 90 Ind. 244; *Blakeman* v. *Blakeman,* 39 Conn. 320. Relief will be granted where there has been a mistake of law by one party induced by the misrepresentations or undue influence on the part of the other. *Sands* v. *Sands,* 112 Ill. 225; *Whelen's Appeal,* 70 Pa. St. 410. Also where the arrangement was entered into improvidently or without deliberation relief will be given upon the theory of surprise. *Pusey* v. *Desbouvrie,* 3 P. Wms. 315, 24 Eng. Reprint 1081. Again no one will be allowed to enrich himself unjustly at the expense of another by reason of an innocent mistake of law entertained by both parties. *Benson* v. *Bunting,* 127 Cal. 532, 59 Pac. 991, 78 Am. St. Rep. 81; *Dinwiddie* v. *Self,* 145 Ill. 290, 305, 33 N. E. 892. Some courts have gone to the extent of holding that if the parties have acted under a common mistake of law and the party injured thereby can be relieved without doing injustice to others equity will afford him redress. *Lawrence County Bank* v. *Arndt,* 69 Ark. 406, 65 S. W. 1052; *Freichnecht* v. *Meyer,* 39 N. J. Eq. 551. Although, as said above, the courts lay down the rule emphatically that where both the parties acted in ignorance of the law, with opportunity to inform themselves, equity will not grant relief, still where both parties enter into an agreement basing it upon a mistaken assumption of the law relating to it, the courts with more or less frankness find some means of affording relief. 16 CYC. 75.

TRUSTS—TRUSTS EX MALIFICIO—ESTABLISHMENT.—The testator devised his property to three members of a lodge of which he was a member upon the promise of one of them that they would transfer it to the lodge. They

failed to turn over the property and the lodge through its trustees filed a bill against the legatees to recover the property together with interest. *Held,* Equity will interfere to prevent the legatees from converting the property to their own use and will declare them trustees *ex malificio. Winder et al.* v. *Scholey et al.* (1910), — Oh. St. —, 93 N. E. 1098.

Although by statute wills are required to be wholly in writing, it seems to be well settled that if a person acquires the legal title to property by means of an intentional false or fraudulent promise, express or implied, to hold it for a specific purpose, and having thus obtained the title retains and claims the property as his own in violation and disregard of his promise, a court of equity will engraft a trust upon the gift and constitute the legatee or devisee a trustee *ex malificio. Larman* v. *Knight,* 140 Ill. 232, 33 Am. St. Rep. 229; *Rollins* v. *Mitchell,* 52 Minn. 41, 38 Am. St. Rep. 519; *Olliffe* v. *Wells,* 130 Mass. 221. Equity acts in such a case not because of the trust declared by the testator, but because of the fraud of the legatee or devisee. *Amherst College* v. *Ritch,* 151 N. Y. 282, 49 N. E. 876, 37 L. R. A. 305. Such a trust may also arise although the legatee makes no promise or representation, but, knowing the desire of the testator, encourages the devise by silently acquiescing. *O'Hara* v. *Dudley,* 95 N. Y. 403, 47 Am. Rep. 53; *Brook* v. *Chappell,* 34 Wis. 405. A promise or acquiescence by one of several joint legatees is sufficient to raise a constructive trust. *O'Hara* v. *Dudley,* supra. But where a devise, intended to be a trust, is made to two as tenants in common, and the trust is subsequently communicated to one only, he takes the property charged with the trust while the devisee not informed takes it discharged. *Tee* v. *Ferris,* 2 Kay & J. 357. The question in these cases upon which the courts are at variance is whether, in order to create a trust, there must be actual intention of fraud in making the promise which influenced the decedent to abandon his purpose or to make or alter a testamentary disposition. Some courts hold that a mere promise is not sufficient. *Ragsdale* v. *Ragsdale,* 68 Miss. 92, 11 L. R. A. 316, 24 Am. St. Rep. 256, 8 South. 315; *Bedilian* v. *Seaton,* 3 Wall. Jr. 279, Fed. Cas. No. 1218; *Cassels* v. *Finn,* 122 Ga. 33, 49 S. E. 749, 68 L. R. A. 80, 106 Am. St. Rep. 91. Other courts say that a mere verbal promise is sufficient. *Curdy* v. *Berton,* 79 Cal. 420, 21 Pac. 858, 5 L. R. A. 189, 12 Am. St. Rep. 157; *Carver* v. *Todd,* 48 N. J. Eq. 102, 27 Am. St. Rep. 466, 21 Atl. 943; *Ransdel* v. *Moore,* 153 Ind. 393, 53 N. E. 767, 53 L. R. A. 753. POMEROY maintains that the latter view is opposed to settled principle and intimates that it is not the weight of authority. 3 POMEROY EQ. JUR., Ed. 3, § 1054. The court in the principal case comes to an opposite conclusion and raises a constructive trust although there is no evidence that there was an actual intention of fraud in making the promise.